

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #4	CCRB Case #: 201501421	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/27/2015 1:30 AM	Location of Incident: § 87(2)(b)	Precinct: 14	18 Mo. SOL 8/27/2016	EO SOL 8/27/2016	
Date/Time CV Reported Fri, 02/27/2015 11:40 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 02/27/2015 11:40 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Hariton Marachilian	4787	935245	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Andrew Ho	5155	941907	MTS PCT
2. POM Anthony Passaro	17484	953220	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Hariton Marachilian	Abuse: Sgt. Hariton Marachilian stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Hariton Marachilian	Abuse: Sgt. Hariton Marachilian frisked § 87(2)(b)	§ 87(2)(b)
C.SGT Hariton Marachilian	Abuse: Sgt. Hariton Marachilian searched § 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On February 27, 2015, § 87(2)(b) filed this complaint with the CCRB via telephone. The incident was recorded by a nearby security camera at 522 5th Avenue.

At approximately 1:30 a.m. on February 27, 2015, § 87(2)(b) was walking eastbound on West 44th Street, towards 5th Avenue, in Manhattan. He was then stopped by Sgt. Hariton Marachilian of Midtown South (**Allegation A**). The investigation determined that § 87(2)(b) was stopped in regards to a report of an armed robbery at 49 West 44th Street. Sgt. Marachilian frisked § 87(2)(b)'s torso (**Allegation B**). He then searched § 87(2)(b) by opening his jacket and reaching into § 87(2)(b)'s jacket and pants pockets (**Allegation C**). Sgt. Marachilian removed several items from § 87(2)(b)'s person, including three cell phones. During the frisk and search, Sgt. Marachilian asked § 87(2)(b) if he had a gun. § 87(2)(b) denied having one, and none was found on his person during the incident. During the search, two uniformed officers, Sgt. Andrew Ho and PO Anthony Passaro of Midtown South, arrived in a marked car. Both officers asked § 87(2)(b) where he was coming from, and where he was going. Sgt. Ho asked him about his employment history, while PO Passaro asked why he had so many cell phones. After several minutes, a show-up identification by the complainants found that § 87(2)(b) was not the perpetrator. § 87(2)(b) was then released from custody. He was not arrested or issued a summons.

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation. § 87(2)(b) filed a notice of claim with the Comptroller's office on § 87(2)(b), claiming loss of freedom and psychological damage (See Board Review: Notice of Claim). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b) (See Board Review: CCRB History).
- Sgt. Marachilian has been a member of the service for ten years, and there are no substantiated CCRB allegations. He has been the subject in three prior CCRB cases, with each case involving allegations of stop, frisk or search. None of these allegations have been substantiated against Sgt. Marachilian.

Findings and Recommendations

Allegation A: Abuse of Authority – Sgt. Hariton Marachilian stopped § 87(2)(b)

Allegation B: Abuse of Authority – Sgt. Hariton Marachilian frisked § 87(2)(b)

It is undisputed that Sgt. Marachilian stopped and frisked § 87(2)(b) after receiving a radio transmission reporting an armed robbery. Sgt. Marachilian was interviewed at the CCRB on April 29, 2015 (See Board Review: Sgt. Marachilian's CCRB Interview). He explained that he stopped § 87(2)(b) because he resembled a description of a suspect that he heard over the radio. The suspect was alleged to have robbed two people at gunpoint.

SPRINT #§ 87(2)(b) was generated at 1:11 a.m. when two unidentified individuals reported that they had been robbed at gunpoint at 49 West 44th Street, between 5th and 6th Avenues. This

incident was reported over the radio and received by Sgt. Marachilian. The dispatcher described the suspect as a 6' tall, 200-pound black male with a black jacket and beanie hat. Officers responded to the location approximately five minutes later and obtained several additional details from the complainants. They broadcast an updated description over the radio, stating that the suspect was 6'1" tall, that the jacket was "puffy," and that the suspect had headed south on 6th Avenue. § 87(2)(b)'s stop is noted at approximately 1:30 a.m. (See Board Review: SPRINT Recording and Summary).

Video footage of the stop was obtained from the Morgan Stanley offices at 522 5th Avenue. In it, § 87(2)(b) a 5'7", 235-pound black male, is seen wearing a black jacket with white stripes on the arms, and a white beanie hat (See Board Review: Video).

An officer may reasonably suspect an individual of a crime in response to a description provided in a radio transmission, provided that the individual's clothing and appearance generally match the information provided in the transmission, the suspect is in close proximity to the location of the crime, and a short period of time has elapsed between the commission of the crime and the detainment of the suspect. People v. Brujan, 2013 N.Y. App. Div. LEXIS 1553 (App. Div. 1st Dept. 2013) An officer may frisk a suspect for a weapon when the officer possesses reasonable suspicion to believe that they have been involved in a violent crime, regardless of whether the office makes any independent observations about the suspect, such as furtive movements or suspicious bulges on their person, that would lead them to believe that the suspect is carrying a weapon. People v. Torres, 239 A.D.2d 154 (App. Div. 2nd Dept. 1997) (See Board Review: Legal Reference).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C: Abuse of Authority – Sgt. Hariton Marachilian searched § 87(2)(b)

It is undisputed that several items, including multiple cell phones, were produced from § 87(2)(b)'s pockets during the stop. It is unclear who produced these items. § 87(2)(b) was interviewed at the CCRB on March 6, 2015 (See Board Review: § 87(2)(b)'s Interview). He alleged that Sgt. Marachilian searched him by opening his jacket, and reaching into both his jacket and pants pockets. He further alleged that Sgt. Marachilian removed several items, including his phones, from these pockets. § 87(2)(b) was not questioned about any of these items until after they had been removed from his person.

Sgt. Marachilian did not recall opening § 87(2)(b)'s jacket or reaching into any of his pockets. While he confirmed that § 87(2)(b)'s phones were produced, he did not recall if he removed them, or if § 87(2)(b) took them out on his own. He also did not recall if § 87(2)(b) was

questioned about the phones before they were produced. Sgt. Ho was interviewed at the CCRB on April 7, 2015, and PO Passaro was interviewed on April 21, 2015 (See Board Review: MOS Interviews). Both officers denied seeing Sgt. Marachilian or any other officer open § 87(2)(b)'s jacket or reach into his pockets. Sgt. Ho did not recall how the phones were produced, while PO Passaro did not recall the phones either being produced or discussed.

It is not clearly shown on the video footage whether any officer reaches into § 87(2)(b)'s jacket or pockets, or if any items are produced from § 87(2)(b)'s person.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

A frisk conducted to check a suspect for weapons cannot be escalated into a search of the suspect's person if the frisk finds no evidence that the suspect is carrying a weapon. A hard object that does not resemble a weapon does not provide an officer with the justification to conduct a search when it is felt during such a frisk. Absent evidence of a weapon found during the frisk, an officer requires probable cause in order to search a suspect's person. People v. Rodriguez, 2008 NY Slip Op 50197U (Sup. Ct. Bronx Cty. 2008) (See Board Review: Legal Reference).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(4-b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date